IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 164 OF 1987

1. Narendra Sonpal, Sole Proprietor Shree Krishna Textiles, a Proprietory concern carrying on business at 10, Kailash Chhaya, 3rd Rajwadi, Ghatkopar, Bombay -400 077) ..Plaintiffs
2. R.R.Textile, C/o. Proprietor Bhagwanji Khetsi Shah Paulas Compound, Kalyan Rd., Bhiwandi Dist.Thane)
3. Haria Textiles, C/o. Proprietor Manusukh L. Haria, 248, Lahoti - Compound Kalyan Rd, Bhiwandi,Thane)
4. Kamla Textile, C/o Proprietor Manusukh L.Haria, 248,Lahoti Compound, Kalyan Rd.,Bhiwandi)
5. Nemchand Mulji Shah C/o.Priprietor Kantilal H. Khimasia, 225 Lahoti Compound, Kalyan Rd.,Bhiwandi.)
6. Pakiza Textile C/o. Proprietor Bhagwani Khetsi Shah, Paulas Compound, Kalyan Rd.,Bhiwandi.)
7. Mansukh Rajpal Shah C/o. Kantilal H. Khimasia 225,Lahoti Compound, Kalyan Rd, Bhiwandi, Dist.Thane.)
8. Paras Textiles C/o. Proprietor Chunilal R.Shah, Gulab Niwas, Ajanta Compound, Dhamarkar Naka, Bhiwandi, Dist.Thane.)
9. Kanghan Fabrics C/o. Chunilal R. Shah, 499, Gulab Niwas, Ajanta Compound, Dhamarkar Naka, Bhiwandi, Dist.Thane.)
10. M.V.Textiles C/o.Proprietor Bhagwanji Khetsi Shah, Paulas Compound, Kalyan Rd.,Bhiwandi,)

Dist.Thane.)
)
11. Manish Textiles, C/o. Proprietor)
Kantilal H. Khimasia 225, Lahoti)
Compound, Kalyan Rd.,Bhiwandi)
Dist.Thane.)
12. Kalpana Textiles C/o. Proprietor)
Manukh L. Haria 248, Lahoti)
Compound, Kalyan Rd.,Bhiwandi)
)
13. Jigenesh Textiles C/o. Proprietor)
Harikchand R.Shah Sonal House,)
Room No.4, 1st Floor, Narpoli,)
Bhiwandi, Dist.Thane.)
)
14. Subhas Textiles C/o. Proprietor)
Bhagwanji Khetsi Shah Paulas)
Compound, Kalyan Rd.,Bhiwandi.)
)
15. Hiten Textiles C/o. Proprietor)
Harkchand R.Shah Sonal House,)
R.No.4, 1st Floor, Narpoli,)
Bhiwandi, Dist.Thane.)
)
16. Vimal Textiles, C/o. Proprietor,)
Harkchand R.Shah, Sonal House,)
R.No.4 1st floor, Narpoli,)
Bhiwandi, Dist.Thane.)
)
17. Kamal Textiles C/o. Proprietor)
Zaverchand J. Shah 219, Lahoti)
Compound, Bhiwandi, Dist.Thane.)
)
18. Sandeep Textiles, C/o. Zaverchand)
J. Shah, 219, Lahoti Compound,)
Bhiwandi, Dist.Thane.)
)
19. Kejal Textiles C/o. Proprietor)
Harkchand R. Shah Sonal House,)
Room No.4, 1st Floor,Narpoli,)
Bhiwandi, Dist.Thane)
)
20. Dinesh Textiles C/o. Proprietor)
Harkchand R.Shah Sonal House,)
R.No.4, 1st floor, Narpoli,)
Bhiwandi, Dist.Thane.)
)
21. Poonam Textiels C/o. Proprietor)
Mansukh L. Haria 248, Lahoti)
Compound, Kalyan Rd.,Bhiwandi.)
)

22. Prakash Textiles, C/o. Proprietor Zaverchand J. Shah, 219,Lahoti Compound, Kalyan Road, Bhiwandi, Dist. Thane.) .. Plaintiffs

V/s.

1. Jam Manufacturing Co. Ltd.,a Company incorporated under the provisions of the Companies Act,1956 and having its Registered office at Lalbaug, Parel, Bombay -400 013) ..Defendants.

2. National Textile Corporation Ltd. a Company registered under the provisions of the Companies Act,1956 and having its registered office at NTC House, Ballard Estate, Bombay-38.)

Mr. V.A.Sonpal for the Plaintiffs.

CORAM : S. A. BOBDE, J.

DATED : 08th FEBRUARY, 2007.

ORAL JUDGMENT :-

. The suit is filed for a decree in the sum of Rs.5,52,844.87/- together with interest on the said amount

2. The first plaintiffs are a proprietory concern and are dealers in and selling agents of Gray Cloth. The plaintiffs No.2 to 22 are manufacturers of Grey Cloth on a small scale. In fact, as an agent on behalf of the others, the first plaintiff supplied 1,20,501.55

Metres of Grey Cloth of the total value of Rs.6,32,853.01/- to the 1st defendant. The first defendant rejected part of the grey cloth of the value of Rs.80,008.14/- and gave credit to the plaintiffs. According to the plaintiffs in the normal course, the first defendant would have issued a cheques, amounting to Rs.5,52,844.87/-. However, as a result of promulgamation of 1983 Ordinance, which was subsequently converted into Textile Undertakings (Taking over the management) Act, 1983; the amounts were not paid by the first defendant. The plaintiffs have, therefore, sued for the said sum being the value of the grey cloth.

3. The defendant No.1 was served by a notice published on 20th October, 2006 in the news paper. However, there is no written statement on record. The second defendant was served in the year November, 1990.

4. Having regard to the uncontroverted averments in the plaint and in the absence of a written statement, I am of view that the suit is liable to be decreed against the defendant No.1.

5. The defendant No.1 company have been nationalised under the provisions of the Textile Undertakings (Nationalization) Act, 1995. Clearly, the

present liability of the defendant is a pre-take over liability.

. Sub-section 6 of section 4 of the Act reads as follows :

> (6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property which has vested in the Central Government under section 3, instituted or preferred by or against the textile company is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the textile undertakings or of anything contained in this Act, but the suit, appeal or other proceedings may be continued, prosecuted or enforced by or against the National Textile Corporation.

This is a pending suit, which is unaffected by the Nationalization Act.

. Section 5 of the said Act reads as follows:

> "5. Owner to be liable for certain prior liabilities.---(1) Every liability, other than the liability specified in sub-section (2) of the owner of a textile undertaking, in relation to the textile undertakings in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.
>
> (2) Any liability arising in respect of--

(a) loans advanced by the Central Government, or a State Government, or both to a textile undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the Central Government under section 3 of the Textile Undertakings (Taking over of Management) Act, 1983, or as the case may be, under section 3 of the Laxmirattan and Atherton West Cotton Mills (Taking over of Management) Act, 1976;

(b) amounts advanced to a textile undertaking [after the management of such undertaking had been taken over by the Central Government under section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983, or as the case may be, under Section 3 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act 1976] by the National Textile Corporation or by a State Textile Corporation, or by both, together with interest due thereon;

(c) wages, salaries and other dues of employees of the textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government, shall, on and from the appointed day, be the liability of the Central Government and shall be discharged for and on behalf of that Government, by the National Textile Corporation as and when repayment of such loans or amounts become due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that,--

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2) in relation to a textile undertaking, in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

(b) no award, decree or order of any Court, tribunal or other authority in relation to any textile undertaking, passed after the appointed day, in respect of any matter, claim or dispute in relation to any matter not referred to in

sub-section (2) which arose before that day shall be enforceable against the Central Government or the National Textile Corporation;

(c) no liability of any textile undertaking or any owner thereof in relation to any textile undertaking before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

6. Therefore, the defendant No.1 alone can be held liable under the decree. This is also a view taken by the division bench of this court in the case of **Rasiklal Ratilal vs. Union of India & Ors, reported in 1991 Mh.L.J. 1366** in relation to the similar provisions.

7. In the circumstances, there shall be a decree in terms of prayer clause (a), however, at the rate of 12% per annum from the date of the suit till payment or realisation.

8. Decree be drawn up accordingly.

(S.A.BOBDE,J)

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